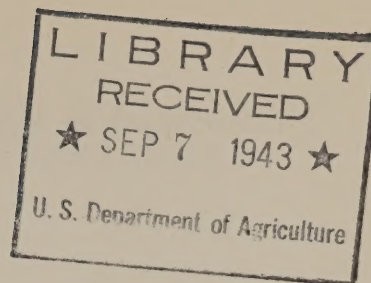


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CALIFORNIA STATE MILK CONTROL ACT

PAPER NO. 4. Series on State Milk Control Acts, Dairy Section,
Agricultural Adjustment Administration, United States Department
of Agriculture.

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Introduction

This is one of a series of papers designed to make available, in a condensed and convenient form, information concerning State milk control acts, the type of regulations issued thereunder, and, in general, the legal developments in connection with their administration and enforcement. One paper will be devoted to each State having such an act.

It is expected that a general summary of all the State acts and regulations will be prepared when the review of individual State acts and regulations is completed. In this connection some comparison may be made. These papers omit much detail which might be helpful to those concerned with legislative or administrative problems of State milk control. Those who desire more complete information will undoubtedly find it to their advantage to get in touch with the officials charged with the administration of these acts.

CONTROL OF FLUID MILK AND FLUID CREAM IN CALIFORNIA:
THE LAW, ITS ADMINISTRATION AND LEGAL STATUS

PART ONE

I. General Character of Legislation.

The Stabilization and Marketing Act for fluid milk and cream, effective June 1, 1935, in contrast to most other similar State milk control laws, is not an emergency measure, although a legislatively declared "urgency," as required by the State Constitution, provided the basis for its immediate effectiveness. It was enacted pursuant to the police powers of the State for the protection of the health and welfare of the people by maintaining satisfactory marketing conditions and achieving reasonable stability within the dairy industry, and as a means for carrying on essential educational activities.

Type of Governing Agency

Local control boards representing fluid milk producers aid the Director of Agriculture in the administration of stabilization and marketing plans formulated by the act. Marketing agreements for fluid cream are administered by local control boards selected according to the provisions of such marketing agreements.

Local Control Board

FLUID MILK. 1/- Such boards usually consist of seven members appointed by the Director of Agriculture from candidates nominated by producers supplying fluid milk to the marketing area. The terms of the members of such boards are two years but the term of three members of the first board expires at the end of one year.

FLUID CREAM. - Under a marketing agreement for fluid cream a local control board is created by and selected according to the terms of the agreement. In the absence of a marketing agreement for fluid cream it may be controlled under a marketing plan for fluid milk, in which case it is possible for the board to be increased to thirteen members, representative of all interests involved.

1/ In order to differentiate between the provisions applicable to fluid milk in contrast to those applicable to fluid cream, and in order to avoid unnecessary duplication, the terms "fluid milk" and "fluid cream" have been capitalized wherever such a differentiation should be made.

Conditions Under Which Powers of Governing Agency May be Exercised

The development and approval of a stabilization and marketing plan for fluid milk or of a marketing agreement for fluid cream are conditioned upon an application submitted to the Director representing, in the case of FLUID MILK, 65 percent or more of producers by number and by volume, producing milk for sale in the marketing area, and in the case of FLUID CREAM, 65 percent of the persons by number and by volume engaged in the production and distribution of cream in any marketing area.

In the case of FLUID MILK, upon the determination of the Director that the marketing area is appropriate and conditions are such as to make a stabilization and marketing plan feasible, a meeting of the producers is called and candidates for the local board submitted, from which the Director makes required appointments. Thereupon the local board formulates a plan which, after public hearing has been held under powers conferred upon the Director by provisions of the Political Code, is made effective upon the approval of the Director and his determination that such plan will reasonably effectuate the purposes of the act. In the case of FLUID CREAM, upon the determination that an application is properly made, the Director may enter into marketing agreements with producers, associations of producers, or distributors, with respect to any marketing area, which, when signed by producers and distributors, are made effective by order of the Director establishing the agreements in the area affected.

Termination of control. - Application of 51 percent or more of such persons and volume as could have initiated such a plan for FLUID MILK makes necessary its termination by the Director. Agreements with respect to FLUID CREAM may provide their own method of termination.

Source of Financing

Local control boards. - Revenue for administrative expenses including amounts for education and sales stimulation, for both fluid milk and fluid cream regulations, is derived from assessments. In the case of FLUID MILK assessments on producers are made without statutory limitation, and in the case of FLUID CREAM assessments are to be equitably apportioned between producers and distributors, but in no case may they exceed five mills per pound milk fat. All sums not turned over to the Director are available for such expenses.

The Director. - Local control boards for both fluid milk and fluid cream are required to turn over to the Director one mill per pound milk fat. Additional revenue is secured from license fees,

penalties recovered through court action, and sums required to be paid to the Director to finance preliminary investigations made by him pursuant to receipt of applications either for a marketing agreement in the case of FLUID CREAM, or a stabilization plan and appointment of a local control board in the case of FLUID MILK. All such revenue is held in a "Department of Agriculture fund."

Statutory protective provisions. - The act contains a separability clause declaring that if any provision of the act is declared unconstitutional, the remainder of the act is not to be affected. However, there is no legislative declaration that it is not intended to apply to transactions in interstate commerce, except as may be permitted by Federal law or the Constitution, such as is found in some other State statutes.

II. Regulatory Provisions.

Powers of the Director

Investigation, records, and reports. - Under the Political Code, a portion of which is incorporated by reference in the milk control law, the Director may make investigations and prosecute actions relative to violations of the act or rules and orders issued by him, and have necessary access to books and records. He also may administer oaths, and issue subpoenas for the attendance of witnesses and production of books and records. Under the act the Director is given power to issue necessary rules and regulations and to require all distributors to file such reports as are necessary in enforcing the act. Access to books and records may also be had through authorized agents. Records and reports so received are to be kept confidential except as they may be disclosed in any hearing before the Director or in any judicial process.

Licenses. - All distributors in areas affected by either a marketing agreement or a stabilization and marketing plan are required to be licensed and to submit an application containing required information, accompanied by a nominal fee of \$3.00. Bonds are not required. Producers supplying milk only to distributors and retail stores are not required to be licensed. Licenses may be revoked whenever a licensee is convicted of a misdemeanor or when a judgment has been rendered against him in any court of competent jurisdiction. The term "misdemeanor" includes all violations of the act or any provision of any stabilization and marketing plan or marketing agreement; hence revocation may follow any violation.

Cooperation with other authorities. - Upon application of and approval by any local control board the Director may confer, enter into agreements, or otherwise cooperate with any local, State, or Federal

authority to promote the stabilization of fluid milk and cream distribution within the State.

Powers of local control board. - The local control boards may (1) formulate, in the case of FLUID MILK, the stabilization and marketing plan, or, in the case of FLUID CREAM, a marketing agreement, and in either case are to administer such regulations;^{2/} (2) assess fees to be paid, in the case of FLUID MILK by producers, and, in the case of FLUID CREAM, by producers and distributors; (3) fix prices or approve the action of the Director in cooperating with other State or Federal authorities; and (4) do all things necessary to carry out the provisions of the plan.

Provisions in Regard to Price Regulation

A declared purpose of the act is to establish terms and conditions under which fluid milk and fluid cream shall be purchased from producers and under which distributors and retail stores shall sell such products. Local boards may fix prices to be paid by distributors for fluid milk and fluid cream, upon approval by the Director. Distributors are required to observe certain fair trade practices set forth in the act, which must be incorporated in any marketing plan submitted to the Director. The act does not authorize the fixing of resale prices for FLUID MILK. Specific authority in the case of fluid cream is given to establish "minimum wholesale prices."

In the determination of prices the act requires that consideration shall be given to such conditions as will, in the several localities and markets of the State and under the varying conditions of production and distribution, assure a continuous supply of milk and cream at fair and reasonable prices. With respect to fluid milk consideration is also required to be given to the economic relationship of butter and other dairy products to the prices of FLUID MILK, and such prices as will best protect the dairy industry. No specific and additional criteria are established with respect to FLUID CREAM prices, although they are subject to the approval of the Director.

Payment to producers. - The act does not contain specific provisions relative to pooling or other mechanics for paying producers.^{3/}

^{2/} The regulation authorized with respect to the marketing of fluid milk is referred to in the act as a "stabilization and marketing plan," and that with respect to fluid cream as a "marketing agreement." In the absence of a marketing agreement for fluid cream, control may be accomplished under a stabilization and marketing plan for fluid milk.

^{3/} In the administration of the act, prices are fixed for FLUID MILK used in the various classifications by distributors. Distributors pay producers on the basis of usage of such FLUID MILK and conduct separate plant pools.

Powers With Respect to Unfair Competition and Trade Practices

Marketing agreements for FLUID CREAM may include a code of fair trade practices, and in any case the provisions of such an agreement are required by the statute to be the standard of conduct for all persons subject thereto. Stabilization and marketing plans for FLUID MILK must include standards of fair trade practices. The following are declared unlawful by the act: (a) Payment of rebates of any kind, in the form of money or otherwise; (b) giving away of milk or other products except to bona fide charities; (c) extension of special prices not extended to all purchasers on like terms and conditions; (d) false or misleading advertising; and (e) price discrimination between customers, including wholesale and consumer trade.

Limitations and Exceptions

Administratively, the powers of the Director to approve plans submitted to him and the power of the local boards to take the initiative in other matters, as above described, create a mutual check and balance system. The Director is specifically authorized to order a board to desist from any course of action not in accordance with the purposes of the act. Other statutory limitations are (a) that an educational and sales program for fluid milk shall not be detrimental to other products,^{4/} (b) no marketing and stabilization plan may involve a limitation upon the production of fluid milk or cream, or the development of monopolies in either production or distribution; and (c) the power of 51 percent or more of persons which could have initiated a plan, to secure its termination.

Violation

Unlawful acts. - The violation of any provision of the act, or of any provision of any stabilization and marketing plan or marketing agreement, is a misdemeanor. No person required to be licensed may act as a distributor without having obtained a license from the Director. The practices already noted are prohibited and declared unlawful and all such violations are subject to statutory penalties.

^{4/} In the case of fluid cream, the agreement may include means for such educational and sales stimulation programs, but there is no such limitation concerning its effect upon other products.

Enforcement and Legal Remedies

The Director shall enforce the provisions of the act and of any plan or agreement, and for such purpose, "may make such rules and regulations as he deems necessary." Under section 353 of the Political Code, in any proceeding in any part of the State he may, through the Superior Court, compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony pertinent or material thereto. For failure to obey an order of the court in such circumstances the witness shall be dealt with as for contempt of court.

The Director may bring an action to enjoin the violation or the threatened violation of any of such provisions in the Superior Court of the county in which such violation occurs or is about to occur.

Any person aggrieved by any order or regulation made effective by a local control board may appeal to the Director, who may make an order granting the redress sought, either in whole or in part, or denying the appeal. Any order of the Director substantially affecting the rights of any interested person may be reviewed by any court of competent jurisdiction, but such action must be started after the effective date of the order complained of, or within 30 days after the injurious effect complained of becomes reasonably apparent.

Status of Cooperative Associations of Producers

Cooperative associations receive mention in only two instances, the first of which is to the effect that "a non-profit cooperative association of producers" may make application on behalf of its members to the Director for the appointment of a local control board for the purpose of formulating and administering a stabilization and marketing plan for fluid milk, each member being counted individually in determining whether the requisite number of producers and volume are represented. The second reference merely indicates that the Director may enter into a marketing agreement with "associations of producers" as well as producers and distributors.

PART TWO

Administrative Procedure

After submission of the stabilization and marketing plan or a marketing agreement to the Director by a local control board and the appropriate administrative declarations and findings of fact, the marketing plan or agreement is put into operation. Marketing plans for fluid milk have been approved for the City and County of San Francisco,

Alameda County (which includes Oakland, Alameda, and Berkeley), the City of Sacramento, San Joaquin County, Los Angeles County (which includes the City of Los Angeles), portions of Riverside and San Bernardino Counties, and the City of Santa Barbara and surrounding towns. As an illustration of a stabilization and marketing plan for fluid milk, that for the Los Angeles County, California, marketing area, effective July 23, 1936, and amended September 1, 1936, is briefly described below. The plan applies to all distributors and producers delivering or producing milk for use in the area. Distributors are prohibited from purchasing milk from producers not complying with the plan.

Prices, deductions, and adjustments. - The plan before being amended called for prices to be paid for fluid milk used as whole milk and milk fat used for standardizing fluid milk at 59 cents per pound, of milk fat, f.o.b. distributors' plants in the sales area. The amendment approved by the Director and made effective September 1, 1936, increased the price to be paid by distributors from 59 cents per pound milk fat to 69 cents per pound, and established a price to be paid for fluid milk used to produce cream for consumption as such of 22 cents per pound milk fat over the average monthly quotation of 92-score butter on the Los Angeles Produce Exchange. The price for fluid milk used for manufacturing purposes is not established in the plan. Prices are subject to deductions for (a) administration, one mill per pound milk fat, which is paid to the Director and the balance retained by the board and (b) hauling, but not in excess of rates charged by common carriers. Additional payments are permissible, provided they are uniform to all producers supplying milk of similar quality or grade.

Provisions in marketing plan incorporating statutory mandates. - These are: (a) Prohibition of practices declared unlawful by the act as indicated above; (b) the duty of the board to maintain prices that will "reflect the proper economic relationship of butter and other dairy products to the price of fluid milk"; (c) requirement that all distributors handling fluid milk in the area are to be licensed; (d) prohibition of the right of any distributor to purchase from a producer not complying with the plan; and (e) a provision that the plan is to be terminated upon application of 51 percent or more of such persons as could have initiated the plan.

Reports to the director. - Distributors are required to submit monthly reports covering the quantity of milk fat pounds delivered to each plant location, detailed as to location, names and addresses of producers, prices paid, deductions or charges made, and a detailed report of sales of fluid milk and fluid cream in the various-sized containers, as well as any other information required by the Director. In addition, a distributor must submit an affidavit indicating the final disposition of milk sold to another distributor.

Cooperative associations. - Cooperative associations qualified under the Agricultural Code are not restricted with respect to deductions or charges, dividends, or premiums made from or to its members, provided that an association, which is also a distributor, makes no deductions to cover an operating loss arising out of its processing or distributing activities unless it is specifically authorized to do so by the members and the Director is properly notified.

Miscellaneous provisions. - Producers or associations of producers are granted the right to check the sampling, weighing, and testing of milk sold by them. An educational program may be undertaken, at the discretion of the board, not to cost in excess of one mill per pound milk fat. Other duties of the board include power to adopt and modify rules and regulations for its own conduct and procedure, and the submission of a monthly report to the Director.

The plan may be amended by the board subject to the approval of the Director who may make such rules and regulations as he deems necessary, such rules being made a part of the plan.

PART THREE

Legal Status

Upon approval by the Director of the marketing plan for the San Francisco area, major distributors supplying the area secured a temporary restraining order in the Superior Court contesting the constitutionality of the act. This case has been pending for approximately one year. Closing briefs have been filed and the industry is awaiting a decision as to the validity of the act. Other cases were filed by distributors in Sacramento and Los Angeles, where restraining orders were issued against the Director. The latter restraining orders were dissolved and the plans are continuing in operation.